IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.12.2007

Coram

THE HONOURABLE Mr. JUSTICE P.JYOTHIMANI

Writ Petition No.35387 of 2007

and M.P.No.1 of 2007

M/s. Premier Plass Pack Limited
Rep. by its Director,
231, Pollachi Road, Kurichi,
Coimbatore - 641 021 .... Petitioner

-Vs.-

1. The Central Bank of India
   Rep. by its Executive Director,
   No.21 Central Office, Chandramukhi,
   Nariman Point, Mumbai
2. The Central Bank of India
   Regional Branch,
   Rep. by its Regional Manager
   14-15 Variety Hall Road,
   Coimbatore - 641 001 .... Respondents

PRAYER.: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus to direct the respondents to forthwith return the title deeds pertaining to, (a) 231 Pollachi Road, Coimbatore, (b) New No.35, D.B.Road, R.S.Puram, Coimbatore, and (c) New No.79, Venkataswamy Road, R.S.Puram Coimbatore, described as under:-

S.No.	Date	Schedule / Description
1.	22.09.1899	Sale Deed executed by Thavanna Pillai in favour of Chinna Konan (Doc. No.1566/1899)
2.	18.09.1913	Mortgage deed executed by Chinna Konan which is discharged on 27.01.1989
3.	27.01.1918	Conveyance deed executed by Chinna Konan in favour of Rangaswami Konan
4.	28.01.1918	Mortgage deed executed by Rangasamy Konan
5.	19.03.1928	Conveyance deed executed by Rangasamy Konan to Sella Konan
6.	07.12.1960	Agreement to sell the land to E.B.P.Haran by Sella Konan

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7	14.12.1960	Sale Deed for conveying the land to Sri E.B.P.Haran, Smt. Kamalam, Sri P.Nagarajan and Sri. P.Ramamurthi (Doc. No.7032/1960)
8	28.04.1935	Sale Deed executed by Municipal Council of Coimbatore in favour of Smt. Valliammal
9	07.02.1935	Sale Deed executed by Valliammal in favour of E.B.P.Haran
10	15.12.1924	Sale Deed executed by Municipal Council of Coimbatore in favour of J.Srinivasa Pillai under Doc.No.4011 of 1924 in the office of the Registrar of Coimbatore.
11	27.08.1925	Sale Deed executed by J.Srinivasa Pillai in favour of Krishnaswamy Pillai under Doc.No.3260 of 1925 in the office of the Registrar of Coimbatore
12	07.05.1948	Agreement of deed executed by Sri.M.K.Surya Pratapam, Sri M.K.Rajaram, Sri M.K.Ganesan, Sri M.K.Seshan and Sri M.K.sampath, sons of M.Krishnaswamy Pillai and Smt. Kumudammal, and Smt. Rajammal wife of Sri. K.Krishnaswamy Pillai in favour of Sri.K.M.Gopalakrishna Iyer, S/o.Mahadeva Jadavallaban for sale deed authorising Sri.M.K.Surya Pratapam to execute the deed of sale as Hindu Joint Family Member.
13	17.05.1948	Sale Deed executed by Sri M.K.Surya Pratapam in favour of K.M.Gopalakrishna Iyer under Doc.No.1794 of 1948 in the office of the Registrar of Coimbatore.
14	12.07.1956	Sale Deed executed by Sri K.M.Gopalakrishna Iyer in favour of Smt. Kamalam under Doc.No.3253 of 1956 in the office of the Registrar of Coimbatore.

- - -

For Petitioner : Mr. M.S.Krishnan, for M/s. Sarvabhauman Associates.

For Respondents : Mr. F.B.Benjamin George

- - -

O R D E R

With consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner-Company was originally a partnership-firm under the name and style of 'M/s.Premier Paper Products', in which P.Nagarajan, P.Ramamurthy and P.Rajarathinam were the partners. The said partnership firm has availed credit facility from the second respondent-Bank in the form of cash credit and term loans. While availing the said loans, the petitioner-firm has deposited the original documents of title pertaining to the properties situated at (a) 231 Pollachi Road, Coimbatore, (b) New No.35, D.B.Road, R.S.Puram, Coimbatore, and (c) New No.79, Venkataswamy

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Road, R.S.Puram Coimbatore. As per the affidavit the following 14 original documents have been entrusted with the second respondent by the petitioner which are as follows:-

S.No.	Date	Schedule / Description
1.	22.09.1899	Sale Deed executed by Thavanna Pillai in favour of Chinna Konan (Doc. No.1566/1899)
2.	18.09.1913	Mortgage deed executed by Chinna Konan which is discharged on 27.01.1989
3.	27.01.1918	Conveyance deed executed by Chinna Konan in favour of Rangaswami Konan
4.	28.01.1918	Mortgage deed executed by Rangasamy Konan
5.	19.03.1928	Conveyance deed executed by Rangasamy Konan to Sella Konan
6.	07.12.1960	Agreement to sell the land to E.B.P.Haran by Sella Konan
7	14.12.1960	Sale Deed for conveying the land to Sri E.B.P.Haran, Smt. Kamalam, Sri P.Nagarajan and Sri. P.Ramamurthi (Doc. No.7032/1960)
8	28.04.1935	Sale Deed executed by Municipal Council of Coimbatore in favour of Smt. Valliammal
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11	27.08.1925	Sale Deed executed by J.Srinivasa Pillai in favour of Krishnaswamy Pillai under Doc.No.3260 of 1925 in the office of the Registrar of Coimbatore
12	07.05.1948	Agreement of deed executed by Sri.M.K.Surya Pratapam, Sri M.K.Rajaram, Sri M.K.Ganesan, Sri M.K.Seshan and Sri M.K.sampath, sons of M.Krishnaswamy Pillai and Smt. Kumudammal, and Smt. Rajammal wife of Sri. K.Krishnaswamy Pillai in favour of Sri.K.M.Gopalakrishna Iyer, S/o.Mahadeva Jadavallaban for sale deed authorising Sri.M.K.Surya Pratapam to execute the deed of sale as Hindu Joint Family Member.
13	17.05.1948	Sale Deed executed by Sri M.K.Surya Pratapam in favour of K.M.Gopalakrishna Iyer under Doc.No.1794 of 1948 in the office of the Registrar of Coimbatore.
14	12.07.1956	Sale Deed executed by Sri K.M.Gopalakrishna Iyer in favour of Smt. Kamalam under Doc.No.3253 of 1956 in the office of the Registrar of Coimbatore.

3. The second respondent has filed a suit in O.S.No.454 of 1995 on the file of the learned Principal Subordinate Judge, Coimbatore, for recovery of the said loan amount. Consequent to the enactment of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the suit in O.S.No.454 of 1995 was transferred initially to the Debt Recovery Tribunal - I, Chennai, in T.A.No.1499 of 1998 and subsequently to the Debt Recovery Tribunal, Coimbatore, in T.A.No.1458 of 2002. It is due to the

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said litigations, a one-time settlement was arrived at between the parties as per the proceedings of the second respondent dated 21.07.2006 and the respondents agreed to receive a sum of Rs.450 lakhs together with interest detailed in the letter dated 21.07.2006 towards the full and final settlement of the entire claims. The second respondent by a latter dated 17.08.2006 has assured to deliver all the original documents as stated above on payment of Rs.450 lakhs subject to the following conditions:-

> "a) Withdrawal of the case filed by the petitioner in W.P.No.11228 of 2005 on the file of the High Court, Madras.
> b) And filing of a memo of satisfaction with the Debt Recovery Tribunal, Coimbatore, in T.A.No.1458 of 2002".

4. It is the case of the petitioner that pursuant to the said settlement, the petitioner has paid the entire amount with interest and the same has been duly acknowledged by the second respondent on 16.04.2007. Therefore all the conditions which were agreed between the parties have been complied with. After the settlement, it was the duty on the part of the second respondent to return the original documents to the petitioner.

5. A reference to the records in the Civil Court shows that at the time of filing of the suit the original documents were not filed. On enquiry from the Debt Recovery Tribunal it was found that the xerox copy of the documents-title deeds were only marked as exhibits and therefore the original documents are still with the second respondent. Since the second respondent has not handed over the original documents, the petitioner has filed the present writ petition.

6. The second respondent has filed a counter affidavit. In the counter affidavit, the second respondent has admitted the receiving of the original documents and also the settlement having been completed between the petitioner and the second respondent. It is also admitted that the title deeds referred to have been marked as exhibits with xerox copies; when the matter was pending in the Debt Recovery Tribunal, Coimbatore, a compromise was entered; while the second respondent took steps to get back the documents of title deeds from the Debt Recovery Tribunal, it was found that the original documents were not available with the Tribunal; the counsel appearing for the second respondent has intimated the Bank that the documents were filed in the Sub-Court and further the original documents filed in the Sub-Court were not traceable; the counsel has also suggested the second respondent to reconstruct the documents by obtaining certified documents and taking out a newspaper publication vide its letter dated

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04.12.2007. It is the case of the second respondent that the original documents were handed over to its counsel-Mr.M.V.Nagasubramaniam on 10.04.1995 and the second respondent is not able to find out the reason as to whether the documents were misplaced. According to the second respondent, the counsel is also taking earnest steps to locate the documents but till date the respondents are unable to locate the documents.

7. In the letter referred to in the counter affidavit dated 04.12.2007 addressed by the counsel for the second respondent to the second respondent, it is stated as follows:-

> "The documents can be reconstructed and handed over to the party with an undertaking that the originals will be handed over to them as and when they are traced. We can also give a paper publication informing the public that the documents are missing. These steps will adequately safeguard the interests of the parties. The party can always rely upon these facts to show that the original documents are really missing and that they have not been used in any other transaction. If any co-operation is required from my end, I am always prepared to extend it. I am sure quite upset over this issue since I have never been under such a predicament before"

8. Learned counsel for the second respondent fairly submitted that this is a case wherein the whereabouts of the original documents were not traceable inspite of the efforts taken by the second respondent as well as by its counsel. He further submitted that the second respondent-Bank is prepared to issue certified / attested copies of various documents stated above and in addition to that a publication will be issued in the leading newspaper about the missing of the documents. He also further submitted that the second respondent-Bank is prepared to take up this suggestion in safeguarding the interest of the petitioner.

9. On the other hand the learned counsel appearing for the petitioner submitted that the petitioner is ready to accept the said two suggestions made by the learned counsel for respondents. He further submitted that in addition to the the suggestions, the second respondent may be directed to furnish an Indemnity Bond to the effect that in the event of the petitioner sustaining any loss, due to the loss of original documents, the second respondent-Bank should indemnify the loss to the extent of the damages incurred by the petitioner.

10. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

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11. Based on the undertaking given by the second respondent in the counter affidavit, I am able to see that the documents have been misplaced and not traceable. It may be due to the reason that originally the suit was filed in the Sub Court and subsequently by enactment of the Act the suit has been transferred to the Debt Recovery Tribunal, Chennai and on creation of the Debt Recovery Tribunal, Coimbatore, again it was re-transferred to the Debt Recovery Tribunal, Coimbatore and in that process of transfers, there is a possibility of misplacing the documents in question either by the second respondent or by its counsel or in any other manner.

12. In view of the same, I am of the considered view that as suggested by the second respondent in the counter affidavit the second respondent should be directed to issue certified / attested copies of the documents stated to have been entrusted by the petitioner to the second respondent and in addition to that the second respondent should be directed to give a public notice in the leading newspaper about the missing of the documents.

13. In view of the same, the writ petition is disposed of with the following directions:-

(i) The second respondent shall furnish the certified/attested copies of the following documents:-

S.No.	Date	Schedule / Description
1.	22.09.1899	Sale Deed executed by Thavanna Pillai in favour of Chinna Konan (Doc. No.1566/1899)
2.	18.09.1913	Mortgage deed executed by Chinna Konan which is discharged on 27.01.1989
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12	07.05.1948	Agreement of deed executed by Sri.M.K.Surya Pratapam, Sri M.K.Rajaram, Sri M.K.Ganesan, Sri M.K.Seshan and Sri M.K.sampath, sons of M.Krishnaswamy Pillai and Smt. Kumudammal, and Smt. Rajammal wife of Sri. K.Krishnaswamy Pillai in favour of Sri.K.M.Gopalakrishna Iyer, S/o.Mahadeva Jadavallaban for sale deed authorising Sri.M.K.Surya Pratapam to execute the deed of sale as Hindu Joint Family Member.
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14	12.07.1956	Sale Deed executed by Sri K.M.Gopalakrishna Iyer in favour of Smt. Kamalam under Doc.No.3253 of 1956 in the office of the Registrar of Coimbatore.

(ii) The second respondent shall also issue a publication in the leading newspaper about the loss of the documents in question.

(iii) In addition to that it is made clear that in the event of the petitioner incurring any loss, due to the loss of the original documents, it is always open to the petitioner to proceed against the second respondent-Bank for recovery of damages to the extent of loss which has been incurred by the loss of the documents. No costs. Consequently the connected MP is closed.

Srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Executive Director, Central Bank of India
   No.21 Central Office, Chandramukhi,
   Nariman Point, Mumbai

2. The Regional Manager, Central Bank of India
   Regional Branch, 14-15 Variety Hall Road,
   Coimbatore - 641 001

+ 1 cc to Sarvabhauman Associates SR No. 75005
+ 1 cc to F. B. Benjamin George, SR No. 74827

AKR(CO)
SR/2.1.2008

W.P.No.35387 of 2007 and M.P.No.1 of 2007

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